

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Service Rules for the 698-746, 747-762	)	WT Docket No. 06-150
and 777-792 MHz Bands	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Section 68.4(a) of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones	)	
	)	
Biennial Regulatory Review – Amendment of Parts	)	WT Docket No. 03-264
1, 22, 24, 27, and 90 to Streamline and Harmonize	)	
Various Rules Affecting Wireless Radio Services	)	
	)	
Former Nextel Communications, Inc.	)	
Upper 700 MHz Guard Band Licenses and	)	WT Docket No. 06-169
Revisions to Part 27 of the Commission's	)	
Rules	)	
	)	
Implementing a Nationwide, Broadband,	)	
Interoperable Public Safety Network in the	)	PS Docket No. 06-229
700 MHz Band	)	
	)	
Development of Operational, Technical and	)	
Spectrum Requirements for Meeting Federal, State	)	WT Docket No. 96-86
and Local Public Safety Communications	)	
Requirements Through the Year 2010	)	

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments on the Further Notice of Proposed Rulemaking in the above-captioned proceeding.

NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than

200 cable program networks. The cable industry is the nation's largest broadband provider of high speed Internet access after investing \$100 billion over ten years to build a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art telephone service to millions of American consumers.

In its Further Notice, the Commission seeks comment on the structure for the upcoming auction of spectrum in the 700 MHz band, spectrum that will be vacated when broadcasters are required to relinquish their analog broadcast channels in 2009. The Further Notice raises an array of detailed and technical questions requiring specific proposals regarding the size, channel location and geographic areas of available spectrum blocks, and NCTA anticipates that these questions will be addressed with greater specificity by individual cable operators that may intend to participate in the auction.

In these comments, we address a broader concern. As Chairman Martin's separate statement makes clear, some of the proposals set forth in the Further Notice are specifically designed to promote what the Commission calls a "third pipe" for the provision of a "national" broadband service.<sup>1</sup> It is for this reason that the Commission includes a proposal that would "(1) make available at least one 11 MHz paired block; (2) offer at least some large geographic areas; and (3) enable package bidding so that rights to a national service could be acquired."<sup>2</sup> And it is for this reason that Media Access Project and the Ad Hoc Public Interest Spectrum Coalition (PISC) have proposed that the Commission flatly exclude incumbent cable operators and local exchange carriers from even participating in the 700 MHz auction. We challenge the proposal to engineer the auction toward a preordained outcome, and strongly oppose the exclusion of

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<sup>1</sup> Further Notice, Statement of Chairman Martin.

<sup>2</sup> *Id.*

competitors from the auction process.

Designing spectrum auctions to promote a preordained outcome is a major departure from ordinary Commission practice. The Commission has generally recognized that by promoting auctions that allow spectrum to go to the highest bidders, spectrum can be used in the most valued and efficient way, and revenues to the Treasury can be maximized. It has not tried to determine in advance the most desirable uses of the spectrum and then rig the auction in advance in order to guarantee its preferred result.<sup>3</sup>

The proposal to shape the auction to promote certain bidders and potentially to restrict others seems to be prompted by the notion that this could help to introduce competition into a marketplace where such competition does not exist.<sup>4</sup> But those circumstances do not exist here. In this case, tilting the scales in favor of particular bidders on the theory that they might provide a “third national pipe” may, in fact, not only result in inefficient use of the spectrum but may actually *undermine* rather than promote vigorous broadband competition.

The notion that the 700 MHz auction should be rigged to promote a particular competitor appears to be based on several seriously flawed premises:

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<sup>3</sup> See, e.g., Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al., WT Docket No. 06-150, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72, ¶ 235 (rel. Apr. 27, 2007) (“[T]he competitive bidding process ensures that spectrum licenses are assigned to those who place the highest value on the resource and will be suited to put the licenses to their most efficient use”); Lancaster Communications, Inc.; Request for Waiver of Installment Payment Rules for Auction No. 7 and Reinstatement of Licenses; Application for Assignment of 900 MHz Specialized Mobile Radio Licenses, 22 FCC Rcd. 2438, ¶ 15 (2007); CommNet Communications Network, Inc.; Request for Waiver and for Reinstatement of the 900 MHz Specialized Mobile Radio Service T Block License for MTA007, Dallas-Fort Worth, KNNX959, DA 07-2032, Order, ¶ 15 (rel. May 9, 2007) (“The Commission’s rules presume that the entity that bids the most for a license in an auction is the entity that places the highest value on the use of the spectrum, and such entities are presumed to be those best able to put the licenses to their most efficient and effective use for the benefit of the public”).

<sup>4</sup> See, e.g., Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *First Report and Order and Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 6185, 6228 (1991) (“in a service area where only two cellular carriers are licensed per market, the licensee on one frequency block in a market should not own an interest in the other frequency block licensee in the same market”).

*First*, it is simply not true that, absent a jump-start for new competitors, incumbent cable operators and telephone companies are and will remain the only two providers of broadband services. A large and growing number of consumers can already choose among alternatives to cable high speed data (HSD) service and telco-provided DSL, including wireline, wireless and satellite-delivered services. In particular, next-generation wireless services (such as WiMAX) and broadband over powerlines (BPL) technologies have the potential to offer significant competition to cable HSD and DSL services. And major, well-financed companies have publicly committed to these technology alternatives.

Last year, the Commission took another important step to facilitate such additional competition by ruling that BPL, like DSL and cable modem service, should be classified as an “information service.” The Commission noted that this step not only “establishes a minimal regulatory environment for BPL-enabled Internet access service that promotes our goal of ubiquitous availability of broadband to all Americans, but also furthers the Commission’s goal of developing a consistent regulatory framework across broadband platforms by regulating like services in a similar manner.”<sup>5</sup> And just last week, there were reports that DirecTV is investigating BPL solutions.<sup>6</sup>

*Second*, even putting aside these wireless and wireline alternative providers, the aggressive marketplace competition that has emerged between incumbent cable operators and telephone companies demonstrates that there is not the kind of “duopoly” behavior that raises

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<sup>5</sup> *In the Matter of United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006).

<sup>6</sup> SkyReport 5/18/2007 (DIRECTV CEO Chase Carey said the company might test a broadband via powerline service in a major U.S. city as soon as next year. He said DIRECTV is talking with companies that specialize in providing “BPL” technology. He added that the satellite TV company is not alone in approaching entities working on BPL.)

policy concerns, much less warrants regulatory intervention in a spectrum auction. Cable operators and telephone companies are fiercely competing not only in the provision of high-speed Internet service but also in each other's historical core businesses – multichannel video programming service and telephone service.

Having spent more than \$110 billion to deploy broadband facilities capable of providing all these services, cable operators have every incentive to maximize the return on their investment by maximizing the number of customers who use such facilities and by maximizing the number of services purchased by each customer. Moreover, both they and their telco competitors are offering customers the opportunity to purchase all three services – video, Internet and telephone – in combination at reduced rates. These “triple play” bundled offerings make it even more certain that cable operators or telephone companies will continue to compete vigorously in the sale of Internet services.

Failure to make any *one* component of the triple play attractive to a customer can result in that customer purchasing all *three* components from a competitor. And failure to offer the most attractive bundled services at the most attractive bundled price will make it impossible for cable operators to lure telephone customers away from the incumbent telephone companies, just as it will make it impossible for incumbent telephone companies to lure video customers away from incumbent cable operators. In this environment, the idea that the broadband marketplace will show duopolistic tendencies, where broadband prices are high and service quality low, is utterly implausible.

*Third*, the notion that cable operators would, in this already competitive environment, purchase spectrum in the 700 MHz auction for the purpose of “warehousing” it in order to thwart additional competition in the provision of broadband services is absurd. The benefits of

warehousing would be non-existent, while the costs would be enormous. Cable operators already have competitors nationwide that are eager to capture their customers if they fail to offer the most attractive mix of service and price. Spending billions of dollars to purchase spectrum that they have no intention of using would be a useless allocation of resources that cable operators engaged in a competitive battle with telephone companies, direct broadcast satellite (DBS) providers and others can ill afford to waste. Such warehousing would also not be welcomed by the financial markets, which, of course, do not reward wasteful spending.

*Fourth*, precluding cable operators from acquiring spectrum in the 700 MHz band, far from promoting competition in the broadband marketplace, is likely to have precisely the opposite effect. If cable operators are able to outbid others for such spectrum, it will be because they expect to be able to use such spectrum to compete more effectively with their broadband competitors, either by enhancing the quality, efficiency, availability and value of their existing services or by integrating a fourth component – namely, wireless communications services – into their current bundle of services.

Wireless services and capabilities are already a key part of the incumbent telcos' offerings – and, as a result of their acquisitions of the largest wireless carriers, they already have substantial spectrum for such uses. To the extent that offering a bundled “quadruple play” offers efficiencies and competitive advantages, it's important to cable operators – and important to the preservation of fair and vigorous competition – that they not be artificially precluded from such offering wireless service, too.<sup>7</sup> The Commission has recently stretched to construe Section 621(a)(1) of the Communications Act in a way that promotes and facilitates the telephone

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<sup>7</sup> See *Verizon Plans Quad Play for this Year*, Reuters, <http://www.reuters.com/article/internetNews/idUSN1626244120070517?feedType=RSS> (quoting Verizon CEO Denny Strigl as saying that “[t]he quadruple play is something we're planning to offer later this year. You'll see that roll out where we do have a contiguous wireline and wireless footprint.”).

companies' ability to add a video component to their bundled offerings.<sup>8</sup> It should not now take steps specifically designed to *prevent* cable operators from adding a wireless service to compete with the telcos' bundled offerings. And even if the Commission were to restrict *both* cable operators and local exchange carriers from bidding, the net effect would be to lock in the incumbent LECs' advantages in this area.

Cable operators and telephone companies have indicated that their goal is to develop next-generation wireless services that are integrated with existing voice, video and Internet service offerings to provide seamless access and use of such services in the home and from mobile devices. Cable's investment in the AWS auctions signaled the value of wireless spectrum to enhance cable's wired offerings. And it is important that cable operators be permitted to acquire adequate spectrum to offer such capabilities if the marketplace is to continue to evolve in a way that offers consumers a choice of vigorously competitive alternatives.

Moreover, structuring the auction to encourage certain specific bidders to create a "national" broadband service certainly does not guarantee that outcome. As the Chairman's separate statement points out, "The leading technology companies – Google, Intel, Skype, Yahoo, along with DirecTV, and EchoStar are the only parties that have *promised to try to provide* a national, wireless broadband alternative."<sup>9</sup> This "promise to try" guarantees nothing – even if these parties were to participate, and eventually to win spectrum, in an auction that is tilted in their favor, there is no guarantee that they will ultimately choose or be able to offer a competitive national broadband service.

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<sup>8</sup> See Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311, FCC 06-180, rel. March 5, 2007.

<sup>9</sup> Statement of Chairman Martin.

And there is no guarantee that these companies will, in fact, win the auction even if the deck is stacked to achieve such an outcome. As the Commission's Report and Order and the comments in this proceeding, make clear, there are a large number of parties interested in providing a broad array of services using the 700 MHz spectrum. These include significant innovative proposals involving public safety. It's impossible to predict who will value the spectrum most and who will end up with the spectrum in this auction. And it's hard for anyone to predict which technologies and services will prove to be most feasible and efficient, and which will be most valuable to consumers

That is as it should be. That is why the Commission should avoid predictive or biased auction rules. The best way to ensure, if not guarantee, that the spectrum *is* used in the most efficient and valuable manner is to rely on the marketplace – *i.e.*, to auction it in an unbiased manner that does not attempt to pre-select the winners and losers. That has been a hallmark in the Commission's conduct of spectrum auctions. To do otherwise now would be to ignore the immense success of the Commission's pro-competitive, pro-marketplace policies.

Respectfully submitted,

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